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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

IN THE MATTER OF THE) DOCKET NO. E-01461A-15-0363
APPLICATION OF TRICO ELECTRIC)
COOPERATIVE, INC, AN ARIZONA)
NONPROFIT CORPORATION, FOR A)
DETERMINATION OF THE) MOTION TO MODIFY PROCEDURAL
CURRENT FAIR VALUE OF ITS) SCHEDULE AND COMPEL RESPONSE
UTILITY PLANT AND PROPERTY) TO FOURTH DATA REQUESTS 4.1, 4.2,
AND FOR INCREASES IN ITS RATES) 4.4-4.10, 4.14, AND 4.15
AND CHARGES FOR UTILITY)
SERVICE AND FOR RELATED)
APPROVALS.)

Trico refuses to fully answer Energy Freedom Coalition of America's ("EFCA") Fourth Set of Data Requests. 19 days ago Trico committed that it would provide responses to specific Requests by Friday, August 5, 2016; however, Trico failed to provide any response, even after follow up from EFCA. Trico's failure to provide responses despite commitments to do so, has made it impossible for EFCA to gather or use the requested information in its upcoming testimony, due tomorrow (Friday, August 12, 2016). The only appropriate remedy for this abuse of the discovery process is to continue the date set for the Hearing, reset the date for submission of Rebuttal Testimony, and Order Trico to provide complete responses. Any other relief would reward Trico for its dilatory and improper behavior.

The Data Requests at issue seek communications between Trico and its testifying expert

1 witness and relevant prior statements by Trico's witnesses and executives. Trico objected to each
2 of the Requests at issue and occasionally followed its objections with non-responsive, incomplete
3 answers to EFCA's Requests. The incomplete answers from Trico fall far short of Trico's duty to
4 answer "fully."¹

5 • Trico's objections are not supported by Arizona law and its responses are not
6 consistent with its discovery obligations. Arizona follows a bright-line rule allowing full discovery
7 of testifying expert materials, including all communications, data, and opinions shared among the
8 expert, the party, and counsel.² Guernsey and its employee, Mr. Hendricks, provided pre-filed
9 expert testimony in this case. Is Trico permitted to conceal the information Trico shared with its
10 testifying expert contrary to Arizona case law?

11 • Arizona allows discovery of all information which may lead to the discovery of
12 admissible evidence.³ Prior statements of parties and witnesses are often admissible⁴ and therefore
13 are discoverable. Is Trico permitted to withhold the statements of its officers and witnesses related
14 to the subject matter of this case?

15 • Arizona requires parties to answer discovery requests "fully."⁵ Trico followed
16 some of its improper objections with incomplete responses. These incomplete responses withheld
17 relevant information and failed to fully answer EFCA's Requests. Is Trico permitted to provide
18 incomplete responses and improper objections to thwart the discovery process?

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 Arizona allows discovery "broadly and liberally."⁶ In Arizona, discovery should be freely
21 had to "facilitate identifying the issues, promote justice, provide a more efficient and speedy
22 disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a 'guessing
23 game.'"⁷ An objecting party has the burden of persuasion and proof to demonstrate that its

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25 ¹ Ariz. R. Civ. P. 33(a).

26 ² *Emergency Care Dynamics, Ltd. v. Superior Court In and For County of Maricopa*, 188 Ariz. 32, 37, 932 P.2d 297,
302 (App. 1997).

27 ³ Ariz. R. Civ. P. 26.

28 ⁴ Ariz. R. Evid. 801(D).

⁵ Ariz. R. Civ. P. 33(a).

⁶ *Id.*

⁷ *Id.*

1 objections are proper.⁸

2 **I. TRICO CANNOT EXPLAIN OR DEFEND ITS IMPROPER OBJECTIONS.**

3 Proper objections must “be *specific*, non-boilerplate, *and supported by particularized facts*
4 where necessary *to demonstrate the basis for the objection.*”⁹ [Emphasis added]. Arizona’s
5 Supreme Court has stated that “General objections, such as ... unreasonably burdensome,
6 oppressive, or vexations, ... irrelevant and immaterial, ...**are insufficient.**”¹⁰ [Emphasis added].
7 Courts repeatedly conclude that “pat, generic, nonspecific objections, intoning the same boilerplate
8 language, are inconsistent with both the letter and the spirit of the” Rules of Civil Procedure.¹¹
9 “Boilerplate, generalized objections are inadequate and tantamount to not making any objection at
10 all.”¹²

11 EFCA timely served Data Requests on July 8, 2016. On July 18, Trico responded by
12 objecting to each and every request.¹³ Rather than stating specific objections, Trico recited
13 boilerplate complaints such as “vague and ambiguous” and “overbroad, irrelevant, and unduly
14 burdensome.” While Trico complained that EFCA’s requests were vague and ambiguous, it failed
15 to say which words or phrases it did not understand. It criticized the requests as overbroad,
16 irrelevant, or unduly burdensome; but failed to explain the burden purportedly caused by these
17 requests or how the information sought was irrelevant.

18 On July 20, EFCA personally consulted with Trico’s counsel.¹⁴ EFCA asked Trico to
19 explain its boilerplate objections to facilitate informal resolution. For example, EFCA inquired
20 about the “vague” and “ambiguous” objections. Trico could not explain what words or phrases it
21 did not understand. EFCA asked Trico to explain why prior statements of testifying witnesses on
22 the same subject as their testimony in this matter were irrelevant, overbroad, or unduly
23 burdensome. Trico did not answer that question.

24 If Trico had a good-faith basis for its objections, it could have easily articulated it during

25 ⁸ *Cornet Stores v. Superior Court In & For Yavapai Cty.*, 108 Ariz. 84, 86, 492 P.2d 1191, 1193 (1972).

26 ⁹ *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 356 (D. Md. 2012).

27 ¹⁰ *Cornet Stores v. Superior Court In & For Yavapai Cty.*, 108 Ariz. 84, 86, 492 P.2d 1191, 1193 (1972).

¹¹ *Obiajulu v. City of Rochester*, 166 F.R.D. 293, 295 (W.D.N.Y.1996).

¹² *Walker v. Lakewood Condominium Owners Ass’n*, 186 F.R.D. 584, 587 (C.D.Cal.1999).

28 ¹³ See, Exhibit 1, Trico’s Responses to EFCA’s Data Requests.

¹⁴ See, Exhibit 2, Letter to Trico’s counsel documenting personal consultation.

1 personal consultation. Trico could not do so.

2 Non-specific, boiler-plate objections are incompatible with Arizona's liberal discovery
3 policy.¹⁵ Arizona courts respond sternly to such boiler-plate objections.¹⁶ Courts nationwide are
4 similarly harsh, for instance one court found it "clear" that a party engaging in such objections was
5 "attempting to subvert the purposes of discovery by providing patently evasive answers, asserting
6 boilerplate objections, and unilaterally making determinations of relevance."¹⁷ This type of non-
7 specific objections (or stonewall objections) are so inappropriate that judges prophylactically
8 threaten sanctions against any attorney who stonewalls.¹⁸ An appellate court recently reversed a
9 trial judge for failing to adequately address a prevailing party's general objections.¹⁹ Anything
10 short of reversal would encourage defendants "to 'stonewall' during discovery—withholding or
11 covering up key information that is otherwise available to them through the exercise of reasonable
12 diligence."²⁰

13 Stonewall objections require special judicial vigilance because parties face the temptation
14 to win by concealing evidence.

15 Trico's non-specific, boilerplate objections present the same problems as those causing
16 courts nationwide to condemn such tactics and the parties employing them. During personal
17 consultation, Trico contended that its own application, amendment, and pre-filed testimony ought
18 to reveal enough information about what its witnesses think such that additional discovery was not
19 needed. Trico's approach would leave EFCA with "no means to probe" Trico's potentially "self-
20 serving story."²¹ This is the very epitome of stonewalling and is "without question
21 unacceptable."²²

22 //
23
24

25 ¹⁵ *U-Totem Store v. Walker*, 142 Ariz. 549, 552, 691 P.2d 315, 318 (App. 1984).

26 ¹⁶ *Roberts v. City of Phoenix*, 225 Ariz. 112, 121, 235 P.3d 265, 274 (App. 2010).

27 ¹⁷ *Klayman v. Judicial Watch, Inc.*, 256 F.R.D. 258, 262 n.6 (D.D.C.).

28 ¹⁸ *Osborne v. Billings Clinic*, No. CV 14-126-BLG-SPW, 2015 WL 150252, at *2 (D. Mont. Jan. 12, 2015).

¹⁹ *In re PHC, Inc. S'holder Litig.*, 762 F.3d 138, 145 (1st Cir. 2014).

²⁰ *Id.*

²¹ *In re Klem*, 362 B.R. 585, 595 (Bankr. W.D.N.Y. 2007).

²² *Id.*

1 **II. TRICO WITHHELD RELEVANT MATERIAL.**

2 **A. TRICO SHOULD PRODUCE EXPERT MATERIALS.**

3 Request 4.7 sought Trico's communication with its testifying expert regarding demand
4 charges. Request 4.14 requests Trico's communication with its testifying expert over the past 12
5 months. Trico contends discovery of its expert communications is "overbroad irrelevant and
6 unduly burdensome."²³ It also claimed the request sought "*potential* work product."²⁴

7 In Arizona, a party may discover communication with testifying experts.²⁵ Arizona policy
8 favors an "expansive scope for expert cross-examination."²⁶ Arizona's rules grant an "expansive
9 scope for pretrial discovery from expert witnesses."²⁷ "Arizona authorities consistently have
10 supported free-ranging, skeptical cross-examination of expert witnesses and open discovery to
11 probe the groundwork for their opinions."²⁸

12 Arizona's Court of Appeals implements this open-discovery policy with a "bright line"
13 rule that parties may discover **all testifying expert communications, even if the expert also**
14 **claims a consultant role.**²⁹ [Emphasis added]. "An expert may be either a witness or a protected
15 consultant, but not both. 'Counsel must choose.'"³⁰

16 EFCA understands Trico to be claiming its designated expert witness in this case also
17 communicates with Trico in a consulting capacity regarding issues unrelated to this rate case.
18 However, Arizona provides no protection to dual-hat experts—those who testify and claim some
19 additional consulting role—because parsing those roles burdens tribunals and counsel. "Having
20 an expert who is both creates an unmanageable situation by requiring a question-by-question
21 analysis of an expert witnesses' deposition testimony to determine whether the work product
22 doctrine applies."³¹ That piecemeal doctrine would render work-product protection "uncertain for
23

24 ²³ See Exhibit 1, at 4.14.

25 ²⁴ Exhibit. 1 at 4.14 (emphasis added).

26 ²⁵ See, e.g., Ariz. R. Civ. P. 26(b)(4); *Slade v. Schneider*, 212 Ariz. 176, 181, 129 P.3d 465, 470 (App. 2006).

27 ²⁶ *Emergency Care*, 188 Ariz. at 36, 932 P.2d at 301 (App. 1997).

28 ²⁷ *Id.*

29 ²⁸ *Id.*

30 ²⁹ *Id.* at 37, 932 P.2d at 302.

31 ³⁰ *Id.* at 36, 932 P.2d at 301 (quoting *Furniture World, Inc. v. D.A.V. Thrift Stores, Inc.*, 168 F.R.D. 61, 63 (D.N.M.1996)).

³¹ *Emergency Care*, 188 Ariz. at 36, 932 P.2d at 301 (App. 1997).

1 those invoking it and amorphous for those attacking it.”³² Even worse, “[d]iscovery battles to
2 define the extent of such protection case-by-case would raise litigation costs for parties and inflict
3 trial courts with an endless string of in camera inspections.”³³ Arizona’s bright-line rule is “the
4 most practical, most economical, and surest way to relieve such ambiguity.”³⁴

5 Arizona’s open discovery policy subjects all of Trico’s testifying expert’s communications
6 to discovery. During personal consultation, Trico admitted it withheld expert communications
7 because of a dual-hat problem. Trico offered to provide “written communications with Guernsey
8 regarding the Trico rate case.”³⁵ However, as set forth above, Trico subsequently reneged on that
9 offer, and it has provided no expert discovery. Even if Trico had kept its word, that narrower scope
10 of disclosure would not discharge its duty.

11 EFCA needs all of Trico’s expert communications because any information the expert
12 received or provided is relevant to his opinions. All of Trico’s communication with Guernsey
13 “reflect[s] the relations between expert, hiring client and counsel, which may reveal bias.”³⁶ These
14 communications may also “reveal an expert’s sources and prior opinions on the subject of his or
15 her testimony—all fodder for ‘free-ranging, skeptical cross-examination’ of that expert.”³⁷ The
16 only way to shield pre-litigation consulting work from discovery is “by simply selecting testifying
17 experts who did not also serve as pre-litigation consultants.”³⁸

18 Letting Trico parse its expert communications into discoverable and undiscoverable
19 batches creates the “unmanageable situation” Arizona’s Court of Appeals warned against. Trico’s
20 proposal would require the Commission to engage in document-by-document scrutiny of its
21 communications. That review will be especially difficult because Trico refuses to produce a
22 privilege log. Absent judicial intervention, Trico will deprive EFCA of its ability to scrutinize its
23 subjective, document-by-document application of a work product claim. This case presents, in
24 spades, the problems that led the Court of Appeals to conclude a bright line rule is “the most

25 ³² *Id.*

26 ³³ *Id.*

27 ³⁴ *Id.*

28 ³⁵ Ex. 3.

³⁶ *Ariz. Ind. Redistricting Com'n v. Fields*, 206 Ariz. 130, 144, 75 P.3d 1088, 1103 (App. 2003).

³⁷ *Id.* (quoting *Emergency Care*, 188 Ariz. at 35-36, 932 P.2d at 300-01).

³⁸ *Ariz. Ind. Redistricting Com'n v. Fields*, 206 Ariz. 130, 144, 75 P.3d 1088, 1103 (App. 2003).

1 practical, most economical, and surest way to relieve such ambiguity.”³⁹

2 ***B. TRICO SHOULD PRODUCE RELEVANT COMMUNICATIONS.***

3 Arizona allows open discovery of prior party and witness statements. Arizona permits
4 discovery whenever it *may* lead to the discovery of admissible evidence.⁴⁰ Arizona has rules of
5 evidence creating specific opportunities to admit the prior statements of parties and witnesses.⁴¹
6 These prior statements may impeach, clarify, or explain other testimony. Most of the Fourth Set
7 of Data Requests (4.1, 4.2, 4.6, 4.7, 4.9, 4.10, 4.14, & 4.15) sought prior party and witness
8 statements. EFCA requests, for example, a list of other utility workers with whom any Trico
9 witness “has discussed this rate case or any of the individual elements thereof in the previous
10 twelve months.”⁴² Trico refused to answer. Of course, learning who Trico witnesses spoke to
11 regarding the rate case gives EFCA an opportunity to discover prior witness statements.

12 As another example, EFCA requested Trico’s external communications with parties in
13 three related dockets because Trico cited these dockets as the reason for its amendment.⁴³ Thus
14 Trico placed the issue into question. Trico’s CEO admits that these dockets caused Trico to amend
15 its application.⁴⁴ EFCA requested Trico’s communication with parties to these motivating dockets
16 related to the issues Trico raises in its amendment—“demand charges or the rate treatment of
17 current and/or future distributed generation solar customers.”⁴⁵ Again, these communications were
18 placed directly into question by Trico and made highly probative and relevant when Trico cited to
19 them as the justification for its amendment. It should provide this information.

20 ***C. TRICO SHOULD CURE INCOMPLETE ANSWERS.***

21 Trico’s objections to data requests 4.1, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.10 precede incomplete,
22 non-responsive answers. Arizona Rule of Civil Procedure 33(a) requires Trico to answer questions
23 “fully.” Partial answers violate the rule. Trico should be ordered to supplement each of these
24 incomplete responses.

25

³⁹ *Emergency Care*, 188 Ariz. at 36, 932 P.2d at 301 (App. 1997).

26 ⁴⁰ Ariz. R. Civ. P. 26.

27 ⁴¹ Ariz. R. Evid. 801(D).

⁴² Exhibit 1 at 4.2(b).

⁴³ Exhibit 1.

28 ⁴⁴ Exhibit 3, Excerpts of the Testimony of Trico’s CEO at 2:23-3:7.

⁴⁵ Exhibit. 1 at 4.9.

1 Trico's partial answers to requests 4.1 and 4.10 contain identical language limiting its
2 response to communications "made on behalf of Trico with respect to its rate case." EFCA
3 requested statements of Trico witnesses and executives, regardless of whether they spoke in a
4 representative capacity. In essence, EFCA asked a question, and Trico responded to a different
5 question upon which it placed limitations that EFCA did not intend and did not include.

6 Prior statements of Trico witnesses may explain, impeach, or clarify that witness's
7 testimony regardless of whether the witness spoke in a formal, representative capacity. In fact,
8 some witnesses may be more candid in informal statements than in an official, representative
9 capacity. Trico may not rewrite EFCA's request and then withhold relevant material based on
10 Trico's own determination that a witness does not fall within a category that was not included in
11 the original request.

12 Nor may it withhold prior witness statements it contends were not made "with respect to
13 [this] rate case." EFCA requested prior witness statements on particular relevant topics, such as
14 demand charges yet Trico is again rewriting EFCA's Request to try and turn the Request into a
15 question Trico does not need to answer. Prior witness statements regarding demand charges are
16 relevant, even if they were not made "with respect to [this] rate case." For example, if a Trico
17 witness now supports demand charges, but opposed them before this rate case, his change of
18 position is relevant cross-examination material. If a Trico witness has made public comments or
19 written articles about the economics of demand charges, that general statement may explain or
20 clarify his specific testimony in this case. Trico's partial answer withholds relevant information
21 that EFCA requested, and the Commission should require it to supplement.

22 Requests 4.6 and 4.7 call for Trico's communications regarding the amendment and
23 demand charges. Request 4.8 calls for documents Trico's board received in connection with its
24 application and amendment. Trico's partial response revealed only the board's minutes. Of
25 course, this omits relevant correspondence among employees and officers. And the board's
26 minutes do not incorporate all of the documents the board received prior to its meeting. This
27 partial response omits important, relevant data. Trico should supplement this response.

28 //

1 **C. TRICO'S STONEWALL OBJECTION WITHHOLDS A PRIVILEGE LOG.**

2 Trico intones privilege and work-product in support of its stonewall objections. These
3 rationalizations fail because 33 days after the Requests were served, Trico still has produced no
4 privilege log. Arizona Rule of Civil Procedure 26(f)(1) requires privilege logs:

5
6 When information is withheld from disclosure or discovery on a claim that it is
7 privileged or subject to protection as trial-preparation materials, the claim shall be
8 made expressly and shall be supported by a description of the nature of the
9 documents, communications, or things not produced or disclosed that is sufficient
10 to enable other parties to contest the claim.

11 Recitation of the words "privilege" or "work-product" does not preserve the objection. Because
12 Trico violated Rule 26(f)(1), the Court may disregard the privilege and work-product bricks in its
13 stonewall objections and order an answer.

14 **III. TRICO ULTIMATELY FAILED TO PROVIDE RESPONSES UPON THE DATE**
15 **STATED BY TRICO AND CONTINUANCE IS A PROPER REMEDY**

16 Subsequent to the conference with EFCA's counsel, Trico agreed to provide responses to
17 Data Requests 4.2(d)(iv), 4.15, and partial responses to 4.7 and 4.14.⁴⁶ August 5, 2016 was the
18 date upon which Trico committed to provide responses. However, Trico failed to provide any
19 material to EFCA on August 5, 2016. On August 8, 2016 (the next business day), counsel for
20 EFCA sent an email asking for the promised information. Counsel for Trico responded in part
21 that, "it will not be provided today."⁴⁷ It is now August 11, 2016, a full 33 days since the Data
22 Request was first issued, 19 days since Trico promised to provide responses, and six days since
23 the August 5th date upon which the responses were due, and a mere six days before the hearing yet
24 EFCA has received nothing.

25 The Commission should continue the upcoming hearing to October 10, 2016 and extend
26 EFCA's rebuttal expert disclosure deadline to September 16, 2016 to mitigate the prejudice
27 resulting from Trico's discovery violation. Rules 26 and 37 allow a tribunal broad discretion to

28 ⁴⁶ See Exhibit 4

⁴⁷ See, Exhibit 5, the email received from Trico's Counsel on August 8, 2016.

1 fashion a remedy once a discovery violation occurs.⁴⁸ Rule 37(b)(2)(C) allows a tribunal to “stay[]
2 further proceedings.” Trico requests the Commission do so.

3 Staying proceedings is the only way to cure the prejudice caused by Trico’s discovery
4 violation. EFCA needs discovery regarding Trico’s expert to prepare its own rebuttal expert
5 report. To use this meaningfully, EFCA’s expert needs time to review the disclosure. If Trico had
6 timely answered EFCA’s July 8 data request, EFCA would have had approximately one month to
7 review the response to incorporate that material into its rebuttal expert report. If the Commission
8 orders disclosure on a prompt schedule, a September 16, 2016 expert deadline will restore EFCA
9 to the position it would have been in if Trico had honored its discovery obligations.

10 Parties like Trico who stonewall discovery with boilerplate objections typically suffer
11 severe sanctions such as imposition of attorneys’ fees and striking their pleadings.⁴⁹ EFCA would
12 have been within its rights to request these severe sanctions. EFCA has conservatively requested
13 a much more moderate remedy; it only requests an extension of time sufficient to restore it to the
14 status quo ante.

15 CONCLUSION & PRAYER FOR RELIEF

16 In this case, the Commission faces the difficult task of determining just and reasonable
17 rates and charges for tens of thousands of Arizona consumers. Trico requested a particular rate
18 structure, and this tribunal must scrutinize it. The Commission deserves a vigorous, skeptical cross
19 examination of Trico, its witnesses, and its expert. As a concerned intervenor, EFCA stands ready
20 to vet Trico’s testimony; it will use any data these witnesses produced or received to do so. The
21 Commission should let EFCA do its job and order Trico to comply with simple and straightforward
22 discovery requests by turning over documentation that is plainly discoverable.

23 In order to assure a fair hearing, EFCA respectfully requests that an Order be issued
24 requiring Trico to comply with and fully respond to the Data Requests discussed herein and
25 modifying the procedural schedule as follows:

26 //

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28 ⁴⁸ Ariz. R. Civ. P. 26(f).

⁴⁹ *Klayman v. Judicial Watch, Inc.*, 256 F.R.D. 258, 262 n.6 (D.D.C. 2009).

1 Rebuttal Testimony Due: September 16th.

2 Hearing Commences: October 10th.⁵⁰

3
4 Respectfully submitted this 11th day of August, 2016.

5
6 /s/ Court S. Rich

7 Court S. Rich
8 Rose Law Group pc
9 Attorney for EFCA

10 **Original and 13 copies filed on**
11 **this 11th day of August, 2016 with:**

12 Docket Control
13 Arizona Corporation Commission
14 1200 W. Washington Street
15 Phoenix, Arizona 85007

16 *I have this day served the foregoing documents on all parties of record in this proceeding by*
17 *sending a copy via electronic or regular mail to:*

18 Janice Alward
19 Arizona Corporation Commission
20 jalward@azcc.gov

21 Thomas Broderick
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50 Note that the proposed schedule accounts for counsel For EFCA and the Applicant participating in the TEP Rate Case hearing scheduled in September.

EXHIBIT 1

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July 18, 2016

BY U.S. MAIL & EMAIL

Court S. Rich
Rose Law Group pc
7144 E. Stetson Drive, Suite 300
Scottsdale, AZ 85251

Re: Trico Electric Cooperative, Inc. General Rate Case
Docket No. E-01461A-15-0363

Responses to EFCA's Fourth Set of Data Requests

Dear Mr. Rich:

We received EFCA's 4th Set of Data Requests after business hours on Friday, July 8, 2016. Pursuant to the Procedural Order, Trico is providing substantive responses to the 4th Set of Data Requests. I would note that almost all of the requests in EFCA's 4th Set of Data Requests could have been asked months ago.

Please let me know if you have any questions.

Very truly yours,

Snell & Wilmer



Michael W. Patten

MWP:jh

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

- EFCA 4.1** Over the last six months, have any of Trico's identified witnesses exchanged any written paper or electronic communications of any kind with any witnesses or consultants for any other utility in the UNS Rate Case, the Sulphur Springs Valley Electric Cooperative Rate Case, the Tucson Electric Power Rate Case, the Value of Solar Docket, or the Arizona Public Service Rate Case relating to rate design, the value of solar, residential demand charges, Trico's positions or strategy in this rate case, the Arizona solar industry, The Alliance for Solar Choice, or EFCA?
- a. If yes, for each Trico witness, list the other utility witness with whom communications have been exchanged; and
 - b. Provide copies of each communication.

RESPONSE: Trico objects to the request as overbroad, irrelevant and unduly burdensome. Notwithstanding the objections and without waiving same, Trico states that no such written paper or electronic communications were made on behalf of Trico with respect to its rate case.

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.2 For each Trico witness identified in this docket provide the following:

- a. The date, time, location, and list of participants in any meeting, conference or other event that the witness has presented or discussed information regarding rate design or this rate case in the previous twelve months.
 - i. For any meeting, conference or other event identified above, provide a copy of any materials or supporting exhibits prepared, shown, distributed, or utilized in any way during the meeting, conference or other event.
- b. A list of any employees or consultants of other Arizona electric utilities (including municipal, cooperatives, and investor owned utilities) with whom the witness has discussed this rate case or any of the individual elements thereof in the previous twelve months.
- c. A list of any employees or consultants of other Arizona electric utilities (including municipal, cooperatives, and investor owned utilities) with whom the witness has discussed rate design for rooftop solar customers in the previous twelve months.
- d. Copies of any and all email communications, text messages, or other forms of written communication occurring over the previous twelve months, by or between the witness and any of the following related to solar rate design, the value of solar, residential demand charges, Trico's positions or strategy in this rate case, the Arizona solar industry, or EFCA:
 - i. Any representatives or employees of the Edison Electric Institute;
 - ii. Any employee or consultant of Arizona Public Service;
 - iii. Any employee or consultant of Pinnacle West Capital Corporation;
 - iv. Any member of Arizona Corporation Commission, their policy advisors or Commission Staff;
 - v. Any employee or consultant of Sulphur Springs Valley Electric Cooperative;
 - vi. Any representatives or employees of Electric Power Research Institute;
 - vii. Any representatives or employees of the United States Rural Utility Services;
 - viii. Any representatives or employees of the National Rural Electric Cooperative Association;
 - ix. Any representatives or employees of the Grand Canyon State Electric Cooperative Association.

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

- e. Copies of any and all email communications, text messages, or other forms of written communication occurring over the previous twelve months, by or between the witnesses regarding the timing, content, or strategy related to the Amendment to the Application filed on May 4, 2016.

RESPONSE: Trico objects to the request as vague and ambiguous, overbroad, irrelevant and unduly burdensome. The request also seeks attorney-client communications and litigation work product.

RESPONDENT:

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.3 Provide copies of any and all documentation of any kind, whether in paper or in electronic form, including but not limited to any analysis, studies, reports, spreadsheets, ledgers, calculations, evaluations, articles, memoranda, or communications that Trico reviewed in the process of considering three-part rates prior to filing its initial Application in this docket.

RESPONSE: Trico objects to the request as overbroad, irrelevant and unduly burdensome. The request also seeks litigation work product. Notwithstanding the objections and without waiving same, Trico has already provided the testimony and work papers supporting Trico's rate case proposals and will be submitting testimony in support of the settlement agreement. Although Trico reviews various trade press and filings in other Commission dockets, Trico did not review any other particular documentation in the process of considering three-part rates prior to filing its initial Application in this docket.

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.4 Has Trico amended its rate design proposals after the sufficiency period in previous rate case proceedings? If so, please provide a brief summary of the circumstances that led to such amendments.

RESPONSE: Trico objects to the request vague and ambiguous, overbroad, irrelevant and potentially unduly burdensome depending on the time frame contemplated. Notwithstanding the objections and without waiving same, Trico states that it is common practice before the Commission for an applicant to review the positions of other parties in the rate case and other Commission actions during the course of the rate case and modify the applicant's position. This potential modification has taken place up to and during the open meeting on which the application is considered. See, for example, the time-of-use rate design in Trico's previous rate case (Decision Nos. 71230 and 71253).

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.5 Please provide a list of all instances in Arizona that Trico is aware of where a utility formally amended its rate case filing more than six months after it was filed. Provide the utility name, the docket number, and the reference to the document and page numbers reflecting such an amendment.

RESPONSE: Trico objects to the request vague and ambiguous, overbroad, irrelevant and potentially unduly burdensome depending on the time frame contemplated. Notwithstanding the objections and without waiving same, Trico states that it is common practice before the Commission for an applicant to review the positions of other parties in the rate case and other Commission actions during the course of the rate case and modify the applicant's position. This potential modification has taken place up to and during the open meeting on which the application is considered. See, for example, the time-of-use rate design in Trico's previous rate case (Decision Nos. 71230 and 71253).

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.6 Provide copies of all communications by, between, or among Trico employees, board members, members, consultants or other third parties (including but not limited to Mr. Hedrick and employees of Guernsey) that relate to the decision as to whether or not Trico should file the Amendment it filed May 4, 2016.

RESPONSE: Trico objects to the request as irrelevant and overbroad. The request also seeks attorney-client communications and litigation work product. Notwithstanding the objections and without waiving same, Trico has previously provided EFCA with the Trico board minutes regarding the May 4, 2016 Amendment.

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.7 Provide copies of all communications by, between, or among Trico employees, board members, members, and consultants (including but not limited to Mr. Hedrick and employees of Guernsey) relating to whether or not the company would pursue a demand charge in its rate case at any time. This request includes communications from up to six months prior to the filing of the initial rate case application in this docket to the date of this request.

RESPONSE: Trico objects to the request as irrelevant. The request also seeks attorney-client communications and litigation work product. Notwithstanding the objections and without waiving same, Trico has previously provided EFCA with the Trico board minutes regarding the filing of the rate case application.

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.8 Provide any and all documentation distributed to the Cooperative's Board that relates to the Amendment and the Application.

RESPONSE: Trico objects to the request as irrelevant and overbroad. The request also seeks attorney-client communications and litigation work product. Notwithstanding the objections and without waiving same, Trico has previously provided EFCA the Trico board minutes regarding the Application and the May 4, 2016 Amendment.

RESPONDENT: Vincent Nitido, CEO/General Manager

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.9 In the testimony accompanying the Amendment, Trico references the UNS rate case, SSVEC rate case, and Value of Solar dockets as influencing its decision to file the Amendment. To the extent it has not already been provided in response to EFCA 4.1, above, provide copies of all communications between Trico, its employees, officers, consultants, lawyers, agents or anyone else acting on behalf of Trico and any party or non-party in those referenced dockets including the employees, officers, consultants, lawyers, agents or anyone else acting on behalf of such other parties or non-parties, relating to demand charges or the rate treatment of current and/or future distributed generation solar customers.

RESPONSE: Trico objects to the Request as vague and ambiguous, overbroad, irrelevant and unduly burdensome.

RESPONDENT:

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.10 In the last 12 months, have any Trico officers, board members, or lawyers, discussed demand charges for residential or small commercial customers or any subset of those classes with the any other utilities, their employees, officers, consultants, lawyers, agents or anyone else acting on behalf of such utilities?

- a. If yes, provide each such utility with whom Trico representative has had such discussions, the circumstances that led to the discussion, who participated in the discussion, and describe with particularity what was discussed.

RESPONSE: Trico objects to the Request as vague and ambiguous, overbroad, irrelevant and unduly burdensome. Notwithstanding the objections and without waiving same, no such communications were made on behalf of Trico with respect to its rate case.

RESPONDENT:

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.11 For each Trico Board Member provide their name, current occupation, years on the Board, remaining term length, and final official results of the last election in which they participated.

RESPONSE: Trico objects to the request as irrelevant. Notwithstanding the objections and without waiving same, see the following webpage:
<https://www.trico.coop/about/board-members>.

RESPONDENT: Vin Nitido

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.12 List with particularity each and every cost, if any, that Trico has incurred with regard to any of its infrastructure as a result of the increased adoption of DG solar by its members. For any cost identified, provide the date it was incurred, the nature of the need to incur the cost, how Trico knows it was attributable to DG, and amount, and any documentation substantiating the cost.

RESPONSE: The request is vague and ambiguous, overbroad, and unduly burdensome. Notwithstanding the objections and without waiving same, Notwithstanding the objections and without waiving same, see Responses to EFCA 1-1, EFCA 1-17 and STF 7.10.

RESPONDENT: Karen Cathers, Chief Operating Officer

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.13 For the test year, exactly how many of Trico's residential class bills by number and percentage were issued in an amount below the average cost to serve customers in that class?

RESPONSE: The request is vague and ambiguous. Notwithstanding the objections and without waiving same, see Trico's work papers and Response to EFCA 1-1, including the Trico Cost of Service provided with the original application, Schedule H-5.0, which provides the information for EFCA to make the requested calculation.

RESPONDENT: Karen Cathers, Chief Operating Officer

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.14 Provide copies of all written and electronic communications between any Trico representatives and any representative of Guernsey over the last 12 months.

RESPONSE: Trico objects to this request as overbroad, irrelevant and unduly burdensome. The request also seeks potential litigation work product.

RESPONDENT:

ENERGY FREEDOM COALITION OF AMERICA'S
FOURTH SET OF DATA REQUESTS TO
TRICO ELECTRIC COOPERATIVE, INC.
DOCKET NO. E-01461A-15-0363
JULY 18, 2016

EFCA 4.15 Provide copies of all written and electronic communications by, between, or among Trico employees, board members, members, witnesses, consultants, attorney or other representative of Trico and any staff member, employee, attorney, witness or other representative of the Arizona Corporation Commission regarding all settlement negotiations and settlement agreements in this docket.

RESPONSE: The request is overbroad, irrelevant and unduly burdensome. Moreover, any such communications are potentially subject to Rule 408.

RESPONDENT:

EXHIBIT 2

July 21, 2016

Sent via U.S. Mail, e-mail, and fax

Michael W. Patten
Snell & Wilmer, L.L.P.
One Arizona Center
400 East Van Buren Street
Suite 1900
Phoenix, AZ 85004
602-382-6070
mpatten@swlaw.com

Re: Personal consultation requesting compliance with rules of civil procedure

Dear Mr. Patten:

Thank you for speaking with Court and me yesterday morning. We called regarding Trico's objections to Energy Freedom Coalition of America's fourth set of data requests. As you know, Trico objected to all of EFCA's data requests in its fourth set and refused to provide any responsive information. EFCA requires this information to argue its case and cannot dismiss Trico's responsibility to provide important information via discovery. EFCA was concerned with Trico's across the board refusal to provide EFCA with any responses to data requests seeking clearly discoverable information and documentation.

In its objections, Trico summarily listed a litany of pro forma objections without supplying any explanation for why such objections were appropriate. Unfortunately, on our phone call, we were still not provided the justification for your objections. In response to Trico's continued refusal to extrapolate upon and offer context and support for its objections, we are writing this correspondence to document the consultation and ask Trico to be reasonable and reconsider or at least attempt to explain its objections before EFCA moves to compel. Unless Trico cooperates with discovery by July 22, 2016, EFCA will have no choice but to file a Motion to Compel.

I. Inadequate Objections

Trico's pro forma objections suffer from vague, inadequate explanation. As you know objections must "be specific, non-boilerplate, and supported by particularized facts where necessary to demonstrate the basis for the objection."¹ "The courts have taken this requirement of specific objections to heart."² Rather than make a specific objection, Trico recited boilerplate complaints such as "vague and ambiguous" and "overbroad, irrelevant, and unduly burdensome." "To voice a successful objection" Trico "cannot simply intone this familiar litany."³

Trico's cursory objections forced Court Rich and me to spend substantial time discussing each data request with you. We requested Trico's reasons for its across the board objections.

¹ *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 356 (D. Md. 2012).

² 8B Wright & Miller, Federal Practice & Procedure, § 2173.

³ *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296 (E.D. Pa. 1980).

Trico's responses were inadequate and it only restated its already boilerplate objections sometimes adding an adjective (e.g., "extremely overbroad") as if that further explained the objection. Neither the repetition nor the adjectives revealed any defensible basis for Trico's across the board objections. Our good faith personal consultation included asking you detailed questions about the objections. We tried to understand what, if any, justification may support Trico's across the board objections. I asked you:

- Why communications regarding cases Trico cited as the basis for its position in this rate case are irrelevant to this rate case.
- Why discussions that Trico witnesses had regarding rate design are irrelevant to Trico's rate design case.
- Why EFCA shouldn't get to discover statements of Trico witnesses regarding the same topic as their anticipated testimony.
- Why communications about the Amendment are irrelevant in a case litigating issues related to the Amendment.
- Why communications regarding demand charges are irrelevant in a rate case considering demand charges.
- What words or phrases in our discovery Trico did not understand; Trico repeatedly asserted "vague and ambiguous" objections. Trico ought to know what it did not understand.
- Why communications related to a proposed settlement are irrelevant to a proceeding considering whether the Commission will approve the settlement.

Unfortunately, Trico did not answer these questions. Based on our call, it appears that Trico lodged its objections almost entirely without basis. I request you to answer these questions before we file our motion to compel in hopes that we may understand your thus-far-unexplained objections. We want to personally consult regarding whatever rationalization Trico may present, but without any explanation, it is impossible to have meaningful discussions about how to avoid a discovery dispute.

You similarly failed to explain Trico's work-product and attorney-client privilege objections. Rule 26(f)(1) requires privilege logs: "When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim."⁴ Recitation of the words "privilege" or "work-product" does not preserve the objection. When I directed your attention to this rule, you indicated that Trico would not be complying with this Rule absent court order.

II. Partial Answers

Some of your objections preceded partial, non-responsive answers. You provided partial, nonresponsive answers to data requests 4.1, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.10. 4.1 and 4.10 contain identical language limiting Trico's response to communications "made on behalf of Trico with respect to its rate case." EFCA requested statements of defined persons, regardless of whether they spoke in a representative capacity. These people are either high level executives or listed witnesses for Trico. Trico may not withhold discovery of relevant statements based on its own determination of the speaker's representative capacity.

EFCA also requested statements on certain relevant topics. Restricting the response to statements made "with respect to its rate case" limits the response beyond EFCA's request. Each topic EFCA listed in the data requests is relevant. For example, prior statements regarding demand charges provide relevant context to testimony regarding demand charges.

⁴ Ariz. R. Civ. P. 26(f)(1).

The partial response to data requests 4.4 and 4.5 is incomplete by its own admission. It provides two examples of amendments. The data request was for every example Trico participated in or knew of.

Requests 4.6 and 4.7 call for Trico's communications regarding the amendment and demand charges. Request 4.8 calls for documents Trico's board received in connection with its application and amendment. Trico's partial response revealed only the board's minutes. Of course, this omits relevant correspondence among employees and officers. And the board's minutes do not incorporate all of the documents the board received prior to its meeting. This partial response omits important, relevant data.

III. Guernsey Communication

Requests 4.7 and 4.14 requested correspondence with your experts, Mr. Hedrick and other Guernsey representatives. You made an unexplained work-product objection to each request. As we discussed, communications with a testifying expert are discoverable in Arizona.⁵ You then contended that your testifying expert has simultaneously served in a consulting expert role.

Arizona applies a "bright line" rule for dual hat experts.⁶ "An expert may be either a witness or a protected consultant, but not both. 'Counsel must choose.'"⁷ Trico chose to designate Hedrick and Guernsey as testifying experts. It cannot treat them as consultants for any purpose.

IV. No agreement to compromise

During our call, Trico did not offer any compromise on any of the requests. Trico insisted that we wait until Tuesday for it to decide whether to answer discovery. Trico shouldn't need six more calendar days to decide whether to stand on objection it already made. Indeed, the scheduling order allows only five days to serve objections to discovery in the first place. Trico should reasonably be able to give a final decision on an objection it already made by Friday.

The looming hearing date—less than a month away—prevents us waiting past Friday to file a motion. We plan to file a motion to compel on July 22. We hope you'll contact us and agree to compromise before that.

Sincerely,


Samuel J. Doncaster
For the firm

⁵ See, e.g., Ariz. R. Civ. P. 26(b)(4); *Slade v. Schneider*, 212 Ariz. 176, 181, 129 P.3d 465, 470 (App. 2006).

⁶ *Emergency Care Dynamics, Ltd. v. Superior Court In and For County of Maricopa*, 188 Ariz. 32, 37, 932 P.2d 297, 302 (App. 1997).

⁷ *Id.* at 36, 932 P.2d at 301 (quoting *Furniture World, Inc. v. D.A.V. Thrift Stores, Inc.*, 168 F.R.D. 61, 63 (D.N.M.1996)).

EXHIBIT 3

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF)	DOCKET NO. E-01461A-15-0363
TRICO ELECTRIC COOPERATIVE, INC., AN)	
ARIZONA NONPROFIT CORPORATION, FOR)	
A DETERMINATION OF THE CURRENT FAIR)	
VALUE OF IT UTILITY PLANT AND)	
PROPERTY AND FOR THE ESTABLISHMENT)	
OF JUST AND REASONABLE RATES AND)	
CHARGES DESIGNED TO REALIZE A)	
REASONABLE RATE OF RETURN ON THE)	
FAIR VALUE OF THE PLANT AND)	
PROPERTIES AND FOR RELATED)	
APPROVALS.)	

Testimony of Vincent Nitido

In Support of Settlement Agreement

on Behalf of

Trico Electric Cooperative, Inc.

July 29, 2016

1 **II. BACKGROUND AND SUMMARY.**

2
3 **Q. Please summarize the reasons why Trico filed this general rate case on October 25,**
4 **2015.**

5 **A.** The principal reason for Trico's rate case is to address increasing inequities regarding who
6 pays for the use of Trico's electric grid. Trico believed that its rate proposals would lead to
7 more equitable and sustainable rates for its Members. These proposals seek to modify
8 Trico's rate design to: (i) recover fixed grid costs associated with existing distributed
9 generation within Trico's service territory by increasing the fixed monthly customer charge
10 and decreasing the volumetric energy rate for all members; (ii) better match fixed cost
11 recovery by customer class to the cost of service for that class; and (iii) reduce the fixed
12 cost-shift and resultant subsidies to members who install rooftop solar or other distributed
13 generation ("DG").

14
15 With respect to DG, Trico supports renewable resources, including the sustainable growth
16 of distributed generation ("DG") in its service area. However, under current rate design
17 and net metering, Trico believes DG growth is placing undue burdens on its non-DG
18 members and is not sustainable in the long run. As I explained in my Direct Testimony, as
19 a member-owned cooperative, Trico has a fiduciary duty to its members as a whole to
20 ensure that its rates are fair and equitable to *all* of its member-customers.

21
22 Trico serves a predominantly rural member base across a large service territory, which
23 results in a higher cost of service (including fixed costs) per member-customer than the
24 State's investor-owned electric utilities. That equates to relatively higher rates, and when
25 members generate power utilizing DG under the current net metering tariff, relatively
26 higher levels of fixed costs that are either lost or shifted to non-DG members. Trico
27 experienced steady growth in the installation of distributed generation in its service

1 territory from 2005, when the Cooperative implemented its first renewable energy plan,
2 and thereafter following the Commission's adoption of the Renewable Energy Standard
3 and Tariff rules ("REST Rules"). That sustainable level of growth continued as the cost of
4 rooftop photovoltaic ("PV") systems declined and efficiencies improved, even as Trico and
5 other Arizona utilities reduced and ultimately eliminated upfront incentives.

6
7 Following the introduction of the financial leasing model in Trico's service territory in
8 2014, however, the number of applications for DG interconnections skyrocketed. In 2013,
9 Trico received 160 applications the year. In December 2014 alone, however, Trico
10 received 114 applications. Trico received 74 applications in January 2015, and 174
11 applications in February 2015. That escalating trend has continued. To put it in
12 perspective, Trico's 2014 test year in this docket reflected 551 interconnected DG systems
13 at the start of 2014. The adjusted test year, which includes interconnected DG systems as
14 of the original grandfather date of February 28, 2015 reflects an additional 711 systems
15 added over 14 months, for a total of 1,262. That does not include an additional 359
16 systems which Trico has interconnected as of the revised grandfather date included in the
17 Settlement Agreement of May 31, 2016 for a total of 1,621, all of which, under the
18 Settlement Agreement, would be grandfathered under the current net metering tariff for the
19 life of the interconnection agreement. Put another way, under the current net metering
20 tariff, Trico's non DG members subsidize \$89.91 per month in fixed grid costs for each
21 interconnected DG system. That equates to an annual subsidy in the amount of \$1,749,000
22 per year as of May 31, 2016 or \$35 million over the 20 year life of the interconnection
23 agreements. That subsidy is continuing to escalate at an alarming rate, and is not
24 sustainable under our current rate design and net metering tariff because the subsidy is
25 ultimately passed on to Trico members without DG. Even at this point, Trico will be
26 locking in a cost shift to non-DG members of over \$1.5 million per year for the next 20
27 years. Trico's member-elected Board of Directors believes that partially reducing the net

EXHIBIT 4

From: "Patten, Michael" <mpatten@swlaw.com>
Date: July 22, 2016 at 8:02:56 AM MST
To: Court Rich <CRich@roselawgroup.com>, "sdoncaster@roselawgroup.com" <sdoncaster@roselawgroup.com>
Cc: "Patten, Michael" <mpatten@swlaw.com>
Subject: Response to July 21 letter re Trico rate case (15-363)

Dear Court and Sam,

I received your July 21, 2016 letter regarding EFCA 's 4th set of Data Requests and our July 20 meet and confer phone call. I have several points in initial response.

First, I disagree with much of your recitation of the call. However, as I told you on the call, I was going to be out of town for work the remainder of the week with limited time availability. And as I told you, I needed to discuss your position with my client before I could respond. I was not in an position to offer a compromise on the phone call without first consulting with my client.

Second, a rate case is a completely different type of proceeding than complaint litigation before a court. Recitation of Superior Court rules is not necessarily relevant when many procedures in a rate case are markedly different than superior court litigation.

Third, I disagree with your belief that we have not responded to several of the data requests. For example, with respect to 4.4 and 4.5, we provided an adequate response. However, contrary to your arguments, we are not obliged to do your work in reviewing publicly available documents at the commission.

I have had the opportunity to discuss your position with Trico. We are prepared to provide the communications with Staff regarding the settlement agreement. I am sure you have compared your notes from the July 17 settlement meeting with the June 22 term sheet you received and the final settlement agreement and have confirmed there are no material differences. Regardless we will provide the communications. We are also prepared to provide the written communications with Guernsey regarding the Trico rate case, although providing such information is well outside standard Commission discovery practices.

Trico believes this is more than reasonable. Beyond this, EFCA's requests are both tardy (all but one these requests could have been asked months ago) and an overreaching, unduly burdensome discovery tactic.

We will endeavor to provide the information by next Friday. Trico is a small rural electric cooperative and has limited resources to collect and provide the information.

Please let me know if you have any questions.

Mike

Michael W Patten
Snell & Wilmer
Via iPad

EXHIBIT 5

Rose Reynolds

Subject: RE: Response to July 21 letter re Trico rate case (15-363)

-----Original Message-----

From: Patten, Michael [mailto:mpatten@swlaw.com]
Sent: Monday, August 8, 2016 10:07 AM
To: Court Rich <CRich@roselawgroup.com>; Sam Doncaster <sdoncaster@roselawgroup.com>
Cc: Hopi Slaughter <HSlaughter@roselawgroup.com>
Subject: RE: Response to July 21 letter re Trico rate case (15-363)

We are still working on providing it. It will not be provided today. We have had two extensive data requests from EFCA in the interim as well.

-----Original Message-----

From: Court Rich [mailto:CRich@roselawgroup.com]
Sent: Monday, August 08, 2016 10:04 AM
To: Patten, Michael; Sam Doncaster
Cc: Hopi Slaughter
Subject: RE: Response to July 21 letter re Trico rate case (15-363)

Mike,

According to your email below, Trico was to have the discovery responses to us by last Friday, August 5, 2016. This will confirm we did not receive the information that Trico indicated it would be providing. Will Trico be providing that information today?

Court S. Rich

7144 E Stetson Drive, Suite 300, Scottsdale Arizona 85251
Direct: 480.505.3937 || Mobile: 602.741.3794

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Think green, please don't print unnecessarily

-----Original Message-----

From: Patten, Michael [mailto:mpatten@swlaw.com]
Sent: Friday, July 22, 2016 8:03 AM

To: Court Rich <CRich@roselawgroup.com>; Sam Doncaster <sdoncaster@roselawgroup.com>
Cc: Patten, Michael <mpatten@swlaw.com>
Subject: Response to July 21 letter re Trico rate case (15-363)

Dear Court and Sam,

I received your July 21, 2016 letter regarding EFCA 's 4th set of Data Requests and our July 20 meet and confer phone call. I have several points in initial response.

First, I disagree with much of your recitation of the call. However, as I told you on the call, I was going to be out of town for work the remainder of the week with limited time availability. And as I told you, I needed to discuss your position with my client before I could respond. I was not in an position to offer a compromise on the phone call without first consulting with my client.

Second, a rate case is a completely different type of proceeding than complaint litigation before a court. Recitation of Superior Court rules is not necessarily relevant when many procedures in a rate case are markedly different than superior court litigation.

Third, I disagree with your belief that we have not responded to several of the data requests. For example, with respect to 4.4and 4.5, we provided an adequate response. However, contrary to your arguments, we are not obliged to do your work in reviewing publicly available documents at the commission.

I have had the opportunity to discuss your position with Trico. We are prepared to provide the communications with Staff regarding the settlement agreement. I am sure you have compared your notes from the July 17 settlement meeting with the June 22 term sheet you received and the final settlement agreement and have confirmed there are no material differences. Regardless we will provide the communications. We are also prepared to provide the written communications with Guernsey regarding the Trico rate case, although providing such information is well outside standard Commission discovery practices.

Trico believes this is more than reasonable. Beyond this, EFCA's requests are both tardy (all but one these requests could have been asked months ago) and an overreaching, unduly burdensome discovery tactic.

We will endeavor to provide the information by next Friday. Trico is a small rural electric cooperative and has limited resources to collect and provide the information.

Please let me know if you have any questions.

Mike

Michael W Patten
Snell & Wilmer
Via iPad